

No. \_\_\_\_\_ 05-599 NOV 9 - 2005

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**In The  
Supreme Court of the United States**

LAURENCE BRAUN,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Second Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Notwithstanding the *dictum* in *Libretti v. United States*, 516 U.S. 29, 49 (1995), do the Fifth and Sixth Amendments, and this Court's decisions in *United States v. Booker*, 543 U.S. \_\_\_, 125 S.Ct. 738 (2005), *Blakely v. Washington*, 542 U.S. 296 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), require that federal criminal RICO forfeiture, which subjects a defendant to additional and mandatory punishment based on facts not decided by the jury – be found by a jury beyond a reasonable doubt, rather than by a judge by a preponderance of the evidence?
2. Does Rule 32.2, Fed.R.Crim.P., which permits the government at its unilateral election to deny a defendant a jury trial on the issue of criminal RICO forfeiture violate the Sixth Amendment and irreconcilably conflict with this Court's decisions in *Booker*, *Blakely*, and *Apprendi*?
3. Did the Second Circuit err in finding that the introduction of a co-defendant's guilty plea – for the purpose of corroborating the testimony of other witnesses as well as to establish the charged conspiracies – at Mr. Braun's trial, an acknowledged violation of his Sixth Amendment right to confrontation as defined in *Crawford v. Washington*, 541 U.S. 36 (2004), constituted harmless error?

## LIST OF ALL PARTIES

All of the parties to the proceeding in the court of whose judgment is sought to be reviewed are listed in the caption of the case appearing on the cover of this Petition.

Defendant-Appellant Phillip Fruchter withdrew his appeal with prejudice prior to briefing before the Second Circuit Court of Appeals.

The Second Circuit affirmed the convictions of the remaining Defendants-Appellants Daouda Yague, Mamadou Sylla, Samba Williams, and Frank Singh, and remanded to the District Court for resentencing under *Booker*, 125 S.Ct. 738.

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**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

Laurence Braun respectfully petitions this Court for a writ of *certiorari* to review the judgment and opinion of the United States Court of Appeals for the Second Circuit. The Court below affirmed his convictions and consequent \$20 million criminal RICO forfeiture judgment, while remanding to the District Court his sentence of imprisonment for resentencing pursuant to *Booker*, 125 S.Ct. 738.

**OPINIONS BELOW**

The Second Circuit's opinion affirming the forfeiture judgment was filed June 14, 2005. See *United States v. Fruchter (Braun)*, 411 F.3d 377 (2d Cir. 2005) (hereinafter "*Fruchter*"), a copy of which is attached hereto at Appendix 1-15. The Second Circuit's Summary Order affirming Mr. Braun's convictions was also issued that same day. A copy of that Order is attached hereto at Appendix 16-25. The United States District Court for the Southern District of New York (Mukasey, C.J.) issued an oral opinion germane to this petition May 21, 2002. A copy of the transcript of that opinion is attached at Appendix 26-56. The Second Court denied Mr. Braun's Petition for a Rehearing with Suggestion for Rehearing *en banc* August 11, 2005. A copy of that Order is attached at Appendix 57-58.

**BASIS FOR JURISDICTION**

The judgment of the United States Court of Appeals for the Second Circuit affirming the Petitioner's convictions and forfeiture judgment was filed and entered June 14, 2005. Appx.

1, 16; *Fruchter*, 411 F.3d 377. The Second Circuit denied the Petition for a Rehearing with Suggestion for Rehearing *en banc* on August 11, 2005. Appx. 57; This petition is therefore timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS CITED**

**The Fifth Amendment to the Constitution of the United States**, in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." U.S. Const., amend. V.

**The Sixth Amendment to the Constitution of the United States**, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . ." U.S. Const., amend. VI.

Section 1963 of title 18, United States Code, mandates forfeiture upon conviction under 18 U.S.C. §1962 (of the Racketeer Influenced and Corrupt Organizations Act, hereinafter "RICO"), and states in pertinent part:

### **§ 1963. Criminal penalties**

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law--